

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7070 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT MARITIME BOARD

Versus

JASUBHAI DEVJIBHAI JHALA

Appearance:

MR RS SANJANWALA for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 07/07/98

ORAL JUDGEMENT

#. Rule. Mr.T.R.Mishra, Learned Advocate for the respondent waives service of rule. The Gujarat Maritime Board has filed the present petition to challenge the award passed by the labour court, Jamnagar in Reference No.1788/90.

#. The respondent Jasubhai Devjibhai Jhala had raised an industrial dispute by alleging that he was

working as 'Khalasi' with the present petitioner for more than 1 year and he had already completed 240 days but all of sudden, he was illegally retrenched by the present petitioner from his service on 31st August, 1989. He therefore sought reinstatement with backwages. The reconciliation officer then made a reference to the labour court of Jamnagar.

#. On behalf of the present petitioner it was contended before the labour court that the respondent was a daily wager and he came as dailywager from January, 1989 till October, 1989 and as there was no work available, he was discharged. It was further contended that the claim of the petitioner that he was terminated on 31-8-1989 and that he was in continuous service for more than 1 year prior to that, was false. He had never completed 240 days therefore in these circumstances, the labour court had no jurisdiction to entertain the said reference.

#. The labour court allowed both the sides to produce the evidence in support of their contention and on considering the material produced before him, he came to the conclusion that the respondent was a daily wager and he had completed more than 240 days and as he was illegally retrenched, his case falls within the purview of Section 25 F and therefore he was entitled for reinstatement with backwages.

#. Being felt aggrieved by the said decision the employer has come before this court. It must be mentioned here that I am considering this procedure under Article 226 & 227 of the Constitution of India so when I am considering the claim of the petitioner under Article 226 & 227 of Constitution of India, I cannot act as an appellate authority and cannot have reappreciation of evidence led before the labour court. I am entitled to interfere with the findings of the labour court only in case I find that the said finding are perverse or grossly erroneous.

#. Mr. Sanjanwala, L.A. vehemently urged before me that the respondent was daily wager and therefore there is no question of his being reinstated and give him benefit of provision of Section-25 F of Industrial Disputes Act. There is no dispute of fact that the respondent was a daily wager but merely because he was daily wagers and even he had been in continue service of 240 days in a year then his service could be terminated by following procedure laid down in Section-25 F. If his service is terminated without giving him notice pay then he is entitled to get benefit of the provision of Section

25 F. If any authority is required for this, then I respectfully cite the case of Ratansingh Vs. Union of India 1997 (II), S.C. -396. Admittedly, the petitioner had not given him one month notice or notice pay before terminating his service. The statement at Annexure D produced by the petitioner along with this petition itself shows that the respondent had completed 241 days from 6-1-89. Therefore, in the circumstances, the finding recorded by the labour court that the respondent was illegally retrenched and that he was entitled to reinstatement with 25 % backwages could not be said to be perverse and consequently there could be no interference with the same by exercising the jurisdiction under Article 226 & 227 of Constitution of India. I, therefore hold that the present petition deserves to be rejected. I accordingly reject the same with no order as to cost.

Date : 7-7-1998 (S.D.Pandit, J.)

(KPP)